



US PATENT APPLICATION
Docket No. ECOL01

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS & INTERFERENCES

Application of: LESTER JOHN ECONOMIDES

Serial No. 10/716,074

Examiner: Purol, Sarah L.

Filed: November 17, 2003

Group Art Unit: 3634

For: HOSE ATTACHMENT ORGANIZER

Date: March 15, 2006

BRIEF OF THE APPELLANT

REAL PARTY IN INTEREST

Applicant, Lester J. Economides, is the real party in interest to this appeal.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to the instant appeal.

STATUS OF CLAIMS

On November 17, 2003, Applicant filed an application for a "Hose Attachment Organizer".

By Office Action dated May 5, 2004, the Examiner rejected Claims 1-5 under Section 112 ¶ 2, rejected Claims 1-4 under Section 102(b) as anticipated by U.S. Patent No. 6,575,312 to Santa Cruz (hereinafter "Santa Cruz"), and rejected Claims 5 and 6 under Section 103(a), as unpatentable over Santa Cruz in view of U.S. Patent No. 3,667,712 to Furgueson (hereinafter "Furgueson").

Applicant responded July 6, 2004, by amending claims, removing the bases for

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the Section 112 rejection, and directing remarks to the Section 102 and 103 rejections.

By Office Action dated November 3, 2004, the Examiner objected to the Drawings and rejected Claims 1-4 under Section 103(a) as unpatentable over Santa Cruz, and rejected Claims 5 and 6 under Section 103(a) as unpatentable over Santa Cruz in view of Furgueson. Applicant responded on January 6, 2005 by amending Claims 1, 3, 4 and 6, directing remarks to the Section 103 rejections, and submitting new Claims 7 and 8.

By Office Action dated May 18, 2005, the Examiner rejected Claims 1-4, 7 and 8 under Section 103(a) as unpatentable over Santa Cruz, and rejected Claims 5 and 6 under Section 103(a) as unpatentable over Santa Cruz in view of Furgueson.

Claims 1-8 are pending in the present application

STATUS OF AMENDMENTS.

No new claims have been added or amended since the filing of the Notice of Appeal. The claims are produced in the appendix to this brief.

SUMMARY OF CLAIMED SUBJECT MATTER.

Numerous attachments for garden hoses exist, such as spray nozzles, narrowing nozzles, sprinkling nozzles, nozzles with brushes for washing a car outside, among others. Applicant's hose attachment organizer includes a rack **10** having a face **12**, one or more mounts **14**, **15** connected to the rack, each mount having threads **16** mateable to a garden hose attachment A. *Specification, pages 4, 5 & Figure 1.* The rack can be attachable to a wall W.

Id. The mounts can be connected to the face of the rack at an acute angle in relation to the face of the rack. *Id.* Mounts can be configured such that threaded portion is positioned to attach a garden hose attachment **A** parallel to the wall **W**, shown at reference **14**, or perpendicular to the wall, shown at reference **15**. *Id.* The rack can be provided with screw holes **18** at either end of said rack, through which screws **20** are insertable. *Id.* In operation, hose attachments **A** are then screwed on the mounts **14**. *Id.* When a user has need for a particular attachment **A**, the attachment **A** is unscrewed from the mount **14** and attached to a garden hose for use. *Id.* When the user is done with a particular attachment **A**, it is unscrewed from the garden hose and screwed on to the mount **14**. *Id.*

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Santa Cruz renders Claims 1-4, 7 and 8 unpatentable under Section 103(a).
2. Whether a combination of Santa Cruz and Furgueson renders Claims 5 and 6 unpatentable under Section 103(a).

ARGUMENT

I. Rejection of Claims 1-4, 7 and 8 over Santa Cruz under Section 103

The Examiner rejected Claims 1-4, 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Santa Cruz. The Examiner rejected Claims 5 and 6 on a combination of Santa Cruz and Furgueson.

In the November 3, 2004 rejection of Claims 1-4, under Section 103(a) over Santa Cruz, the Examiner admits that Santa Cruz “does not teach mounts connected at an acute angle in relation to the face of the rack” but contends that

“such a modification is considered to have been a matter of choice in design, well within the ambit of one having ordinary skill in the art at the time of the invention.” *Office Action, dated November 3, 2004 at page 2.* The Examiner did not cite authority for that proposition.

In the May 18, 2005 rejection of Claims 1-4, 7 and 8 under Section 103(a) over Santa Cruz, the Examiner admits that Santa Cruz “does not specifically teach a rack face attachable to a wall” but contends that the “Face 14 could be attached to a wall, in which case the garden hose attachments would be parallel to the wall” and that “such a mounting modification would have been a matter of choice and obvious for one having ordinary skill in the art at the time of the invention.” *Office Action dated May 18, 2005 at page 2.* The Examiner did not cite authority for that proposition.

In the case of an obviousness rejection, it is the Examiner’s initial burden to put forward a prima facie case. MPEP 2142, 2143; In re Mayne, 41 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1997). The prima facie case requires:

“First, there must be **some suggestion or motivation**, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be **a reasonable expectation of success**. Finally, the prior art reference (or references when combined) must **teach or suggest all the claim limitations**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.”

MPEP 2143 (emphasis added). Section 103 requires analysis of a claimed invention as a whole: “Focusing on the obviousness of substitutions and differences, instead of on the invention as a whole, is a legally improper way to

simplify the often difficult determination of obviousness.” The Gillette Co. v. S.C. Johnson & Son Inc., 16 USPQ2d 1923 (Fed. Cir. 1990). “It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art.” Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416 (Fed. Cir. 1986).

Here, Santa Cruz discloses a support bracket with an elongated channel sized to slidably receive and retain externally threaded attachment plugs to which garden attachments can be screwably attached. See Santa Cruz col. 2, Ins. 40-50. Santa Cruz emphasizes that it is “very important” that the attachment plugs have a hexagonal or square shaped base to avoid turning within the elongated channel. See Santa Cruz col. 3, Ins. 1-6. Conversely, in the present invention, “Mounts can be configured such that threaded portion is positioned to attach a garden hose attachment A parallel to the wall W, shown at reference 14, or perpendicular to the wall, shown at reference 15.” See Specification p. 4, Ins. 14-19 & Figure 1. The reason for providing that the threaded portion on the mounts can be positioned such that the garden hose attachments can be attached parallel to the wall, is that some garden hose attachments, such as a sprinkler head, if attached perpendicular to the wall, as provided in Santa Cruz, would stick straight out and be a safety risk for anyone walking around the yard, and moreover, would put significant forces on the mounting rack that would tend to

pull the rack out of the wall. This is a significant and novel advantage over prior art, which is not taught by prior art.

Moreover, the Examiner provided no reference to support its description of the level of ordinary skill in the art. Here, the Examiner, stated in rejecting Claims 1-4, and then 1-4, 7 and 8, under Section 103(a), that it would have been obvious to one of ordinary skill in the art:

- (1) to modify the teachings of Santa Cruz to provide an mounts connected at an acute angel in relation to the face of the rack because "such a modification is considered to have been a matter of choice in design, well within the ambit of having ordinary skill in the art at the time of the invention", *Office Action, dated November 3, 2004 at page 2*;
- (2) to modify the teachings of Santa Cruz' rack face to mount on the wall such that the hose attachments "would be parallel to the wall", and that such a modification "would have been a matter of choice and obvious for one having ordinary skill in the art at the time of the invention." *Office Action dated May 18, 2005 at page 2*.

The Examiner provided no support for the above statements. The Examiner must rely on a reference for describing the level of ordinary skill in the art. In re Pardo, 684 F.2d 912, 214 USPQ 673 (CCPA 1982). Moreover, things are not a matter of "obvious design choice" if there is a specific purpose for the limits. In re Chu, 66 F.2d 292, 36 USPQ2d 1089 (Fed. Cir. 1995) (reversing the BPAI's holding that a claim was obvious as a design choice); In re Gal, 980 F.2d 717, 25 USPQ2d 1076 (Fed. Cir. 1992) (reversing the BPAI's holding that a claim was obvious as a design choice).

Applicant submits that the Examiner did not support her statements regarding the level of ordinary skill in the art and what someone of ordinary skill in the art would have found obvious. Here, one skilled in the art reading Santa Cruz,

by itself or in conjunction with Furgueson, would not be motivated to discover or build Applicant's invention.

II. Rejection of Claims 5 and 6 over Santa Cruz in view of Furgueson under Section 103

Applicant agrees that if the Board finds Claims 1-4, 7 and 8 are unpatentable over Santa Cruz, then Claims 5 and 6 would be unpatentable on a combination of Santa Cruz and Furgueson. In the event that Claims 1-4, 7 and 8 are patentable over Santa Cruz, then Claims 5 and 6 are patentable as the combination of Furgueson does not address the novel and nonobvious aspects in Claims 5 and 6 that are in common with Claims 1-4, 7 and 8.

SUMMARY

For the foregoing reasons, Appellant believes that the Examiner's rejections of Claims 1-8 were erroneous, and reversal of the decisions is respectfully requested.

Respectfully submitted,

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APPENDIX

CLAIMS

1. A hose attachment organizer, comprising:
 - a rack, having a face, attachable to a wall;
 - a plurality of mounts connected to the rack, each mount having threads mateable to a garden hose attachment, wherein one or more of said mounts has said threads positioned to attach a garden hose attachment parallel to said wall.
2. The organizer of claim 1, further comprising:
 - means for attaching said rack to a wall.
3. The organizer of claim 1, wherein all of said mounts are connected to said rack have said threads positioned to attach a garden hose attachment parallel to said wall.
4. The organizer of claim 2, wherein all of said mounts are connected to said rack have said threads positioned to attach a garden hose attachment parallel to said wall.
5. The organizer of claim 1, wherein said rack is provided with screw holes at either end of said rack, and further comprising screws insertable through each screw hole.
6. A hose attachment organizer, comprising:
 - a rack, having a face, attachable to a wall;
 - a plurality of mounts connected to the rack, each mount having threads mateable to a garden hose attachment, wherein said mounts are

connected to said rack having said threads positioned to attach a garden hose attachment parallel to said wall;

screw holes in and through said rack; and

screws insertable through said screw holes.

7. A hose attachment organizer, comprising:

a rack attachable to a wall;

a one or more mounts connected to the rack mateable to one or garden hose attachments such that the mating of said garden hose attachments to said wall is substantially parallel.

8. A hose attachment organizer, comprising:

a rack, having one or more garden hose attachment mounts, attachable to a wall;

means for mating garden hose attachments to at least one of said mounts parallel to said wall.

APPENDIX

EVIDENCE

None entered.

APPENDIX

RELATED PROCEEDINGS

No related proceedings.